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ZNR UUUUU ZZH
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FM AMEMBASSY SKOPJE
TO RUEHC/SECSTATE WASHDC 7091
INFO RUEHZN/EUROPEAN POLITICAL COLLECTIVE 0214
RUEAWJA/DEPT OF JUSTICE WASHDC
RUEAIIA/CIA WASHINGTON DC
RUESEN/SKOPJE BETA
RUEHNO/USMISSION USNATO 3752

UNCLAS SECTION 01 OF 02 SKOPJE 000146

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E.O. 12958: N/A

TAGS: [PGOV](#) [PREL](#) [MK](#)

SUBJECT: MACEDONIA'S LUSTRATION LAW: OPENING PANDORA'S BOX?

SUMMARY

¶1. (SBU) Parliament unanimously adopted on January 22 a Lustration Law that is likely to make it difficult for those accused of having once served as informers to clear their name, or to fully exercise their constitutional right to employment in the public sector. International observers are concerned about the timing of the law, and about the ability of Macedonian institutions to implement it in a non-partisan and fair manner. End summary.

LUSTRATION LAW PASSED WITH BACKBENCHERS' SUPPORT

¶2. (SBU) On January 22, the Macedonian Parliament passed the Law on Determining Additional Conditions for the Performance of Public Function (Lustration Law). The law --which commentators characterized as a law no political party could afford to oppose-- was adopted unanimously by those present, with 73 votes "in favor." At the moment the voting began, however, 23 MPs left the hall and failed to vote. Notably, the group of 23 included 10 Parliamentary party leaders and four party whips.

LUSTRATION FOR ALL PUBLIC EMPLOYEES

¶3. (SBU) The Lustration Law followed in the footsteps of Macedonia's 2000 Law for the Opening of the Police Files, which made it possible to identify the victims of the old Yugoslav regime (1944-1991), but did not reveal information on the informers. The new law is applicable to elected officials at the state and local level, judges, lawyers, law enforcement and military officials, as well as diplomats and university professors. Candidates for such positions, or persons who currently occupy such positions, are to undergo "verification" of whether they once served as informers or users of information obtained by state agents during the period August 1944 to February 6, 2008, the day the Lustration Law entered into force. Article 4 of the law defines an "informer" as one who knowingly, secretly and continuously worked with the clandestine services in the country by collecting damaging information on persons for political or ideological reasons, and which resulted in financial and/or professional gain for the informer.

PROVE YOUR INNOCENCE AND SELF-INCRIMINATION COMBINED

¶4. (SBU) According to the law, any candidate for a public function, or a person who currently works in such a function, must submit a certified statement affirming that they either were, or were not, an informant during the period covered. That statement is then verified by an 11-member "politically independent commission," which is to be elected by Parliament

to a five-year-term within 60 days from the day the law enters into force. If a candidate for a public elected or appointed office affirms he was/was an informer, then that person has to retract his/her candidacy. The same applies to current officials covered by the law. Non-submission of the statement automatically disqualifies candidates from pursuing public office.

¶15. (SBU) A candidate or currently serving official who disagrees with the commission's decision may appeal to a first instance court within eight days. The court does not have access to classified materials, however, which will make it difficult for judges to decide on the merits of the case since many of the relevant files are classified. The commission also publishes the names of candidates for public office who have failed to submit a certified statement in the State Gazette. The commission publishes the names of persons who currently work in one of the functions covered by the law whose statements regarding their informer status are "judged to have been false." It also refers their names to the appropriate state organs "for further processing," including filing criminal charges. The law imposes penalties for tampering with archive files and other information related to the lustration process.

THE PROPONENTS: NAME AND SHAME THE INFORMERS

¶16. (SBU) The driving force behind the Lustration Law initiative has been Liberal Party's President Andov. A seasoned Macedonian politician and former high level Yugoslav communist converted to anti-communist, Andov has been polishing his lustration pedigree since 1995, when he proposed a parliamentary declaration to apologize to all the victims of communism in Macedonia. Such a declaration was adopted in 2006 and provoked a strong negative public reaction in Macedonia. Andov believes the new Lustration Law

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will make Macedonia's governance structure more democratic by removing persons from public office who were closely associated with the former Yugoslav intelligence structures.

¶17. (SBU) According to Lustration Law co-drafter and current GOM Spokesman Bocevski, the new law is a symbolic "naming and shaming" of informers, which should start a much-needed dialogue in society and "help reform the intelligence community." Asked about the timing of the law, Bocevski asserted that the public was ready to get rid of the "old networks" of former state informants currently working in government, adding that current or future public officials verified to have acted as informers during the period stipulated would be banned from their public positions. (Note: Such a ban from taking part in public life would violate Article 62 of the Constitution, on the irrevocability of a member of parliament's mandate. End note.)

POTENTIAL PITFALLS

¶18. (SBU) Even though most politicians supported the passage of the Lustration Law, the absence of many party heavyweights from the voting hall on the day it was passed highlighted concerns over how the law will be applied. Independent MP Esad Rahic, who voted for the law and who chairs the Parliamentary Committee on Intelligence Oversight, told Poloff that the law would affect only "the small fry." According to Rahic, most files on informants already have been destroyed or transferred to private collections. (Note: GOM Spokesman Bocevski has told us he estimates there are about 15,000-30,000 suspected informants in Macedonia. End note.) Opposition SDSM VP Jani Makraduli, however, who left the plenary session during the voting, expressed concern that the law might threaten the security of the country and create additional "bad blood" in an already tense political situation.

COMMENT

¶9. (SBU) The drafters of the Lustration Law lauded its passage as an "act of historic proportions." After a two-day media blitz, however, nobody, except for the international community, seemed to be paying much attention to the new legislation. Our NATO, EU and OSCE contacts share our unease regarding the legal inconsistencies in the law and the significant potential for its misuse in a political witch-hunt against government opponents. They express concerns also about the explosive issues and different interpretations of historical events that the new law may trigger, concluding that the timing of the passage of the law was "unfortunate" given other government priorities and regional developments.

¶10. (SBU) We will monitor the formation of the special Lustration Law Commission, which is scheduled to be formed by March 30, 2008. We also will press the GOM for impartial and non-partisan application of the lustration process. Our assessment is that the GOM will not rush to implement the law, given the potential pitfalls and the clumsy legal framework that will hamper judges' access to classified information that could either implicate or exonerate suspected informants from Macedonia's past.

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